SUPPORTING BRIEF.

Opinions Below.

The opinion of Judge Gardner in the Court of Common Pleas is unreported. It is printed at R. 68 a-72 a. The opinion of the Superior Court is reported in 141 Pa. Superior Ct. 320, and in 14 At. (2d) 859. It is printed at R. 118-128. The opinion of the Supreme Court is reported in 340 Pa. 528, and in 17 At. (2d) 616. It is printed at R. 144.

Jurisdictional Statement.

The grounds for jurisdiction are set forth under II of the foregoing Petition for Writ of Certiorari, pages 14 to 17, and in the interests of brevity reference is respectfully made thereto.

Statement of the Case.

The Statement of the Matter Involved appearing under I of the foregoing Petition for Writ of Certiorari, states the case with appropriate page references to the printed record, and in the interests of brevity reference is respectfully made thereto, pages 1 to 14.

Argument.

> "Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement. * * * No higher duty, no more solemn responsibility, rests upon this court than that of translating into living law and maintaining this constitutional shield, deliberately planned and inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed, or persuasion." *Chambers v. Florida,* 309 U. S. 227, 241.

The constitutional right of due process of law is as firmly guaranteed by the Fourteenth Amendment where a deprivation of property is involved, as where life or liberty are threatened, and that the inhibited proceedings likewise injure the reputation for honesty and fair dealing of a lawyer of good standing affords them no firmer foundation.

The constitutional guarantee declares as well the right of the individual white citizen to be heard in his own defense before he is condemned as that of the corporation, the chinese, or the negro.

Where deprivation by a State of the right to be heard before being condemned takes the form of legislation, it is frequently possible to find a series of decisions upon similar enactments, establishing that they do or do not violate the constitutional safeguard, and in the latter event to see in advance that the supposed constitutional question has ceased to be "substantial."

But where the deprivation takes place by judicial conduct of a particular case, it can only be discovered by independent examination of the record by this court, if the state courts have refused the Federal Constitutional protection which is the supreme law of the land: *Pierre v. Louisiana,* 306 U. S. 354, 358; *Milk Wagon Driver's Union v. Meadowbrook Dairies,* 85 L. Ed. Adv. 497, 499, 502; *Smith v. O'Grady,* 85 L. Ed. Adv. 548, 549.

When Samuels commenced this litigation (R. 12 a-20 a) seeking to have this petitioner's prior lien reduced for Samuels' exclusive benefit, the whole factual basis thereof centered around his allegation that only $1,750.72 plus interest was *owing by the obligor on the bond and mortgage,* instead of the $4,436.65 for which the original judgment was entered, and *he so alleged it* at R. 14 a in paragraph (4).

If that allegation is true, this petitioner was guilty of fraud in entering the judgment for the larger amount, and the judgment was properly reduced.

But the whole question was one of *fact* on which this petitioner was entitled to produce evidence and to be heard thereon, and he was deprived of property without due process of law by being denied that constitutional right.

There was not a breath of evidence that the mortgage debtor had ever paid one cent in reduction of her indebtedness. There is only carefully shielded secondary evidence that the remaining balance *due the former holders of the mortgage* was $1,750.72 plus interest, without a hint as to whether the reduction was by payments *by the mortgagor looking toward satisfaction of the obligation,* or (as was the actual fact) *by this petitioner on account of installment purchase of the obligation,* leaving the debt of the mortgagor debtor unchanged and changing only the party entitled thereto.

The amount remaining beneficially due the legal holders of the bond and mortgage from *somebody* would be identical in either event. But the amount owing *by the mortgage debtor* on the obligations would be vastly different.

Throughout, this petitioner was uniformly denied the right to prove the truth that it was *he himself,* by his installment payments of purchase money, and *not the debtor* by payments in satisfaction of the obligation, who had reduced the remaining beneficial interest of the previous legal holders of the bond and mortgage, while records of proceedings to which he was not a party, and involving only correct statements of the remaining beneficial interests of the previous holders, were accepted against him as conclu-

sive that it was the *debtor* who had made the reducing payments in satisfaction of her obligation, which matter was *not involved or mentioned therein.*

It may be, and doubtless is true, that there may be a series of erroneous rulings upon evidence, constituting reversible error, but not amounting individually or collectively to a denial of due process of law, as guaranteed by the Federal Constitution.

But it is respectfully submitted that *somewhere* there must come a place where a party, whom a court has *refused to permit to prove his defense at all,* and has *refused to permit to cross-examine his opponent, or his opponent's witnesses, upon any question touching the real issues,* and has *refused to permit to prove any of the vital facts upon which his whole case depends,* and *who has heard his opponent permitted to prove everything by evidence of nothing* (such as at R. 25 a, 26 a, 30 a, 32 a, 36 a-37 a, 41 a, 42 a, 45 a, 46 a, 47 a-48 a, 55 a, 56 a, 57 a, 58 a, 59 a, 60 a, 61 a, 62 a, 63 a, 64 a, 65 a) has been quite as thoroughly deprived of his rights without *due process of law,* even while being permitted to sit in the court-room and watch the havoc, as he would have been if the door had been locked in his face.

It is respectfully submitted that there is no difference, either under the constitution or as to the practical and constitutional effect of the proceedings, between such a case as *Windsor v. McVeigh,* 93 U. S. 274, where the party was cited to appear and defend, and when he attempted to do so was told that his appearance would not be recognized and his defense would be stricken off without hearing him, and the case at bar where he was met with repetitions of "Objection overruled" whenever he objected to hearsay and to ambiguous records of *res inter alios acta,*

all of them as consistent with the truth as with what Samuels was trying to prove by them, and with repetitions of "Objection sustained," whenever he attempted to cross-examine his opponent and his witnesses, or to produce evidence of his own, tending to bring out the *actual truth as to the sole material question of fact on which the case should turn.*

In either event, he is *denied his right to be heard.*

And, if that line between mere error, however harmful, and *a complete denial of the Federal constitutional right to be heard,* can ever be crossed, it is respectfully submitted that it was crossed and the constitutional right denied this petitioner, throughout this strange deaf "hearing," and the successive appeals to the Superior Court and to the Supreme Court of Pennsylvania, in both of which the factual question was *assumed* against him, on ambiguous inadmissible evidence as to the remaining balance due the legal holders of the bond and mortgage from *him* on his contract for installment *purchase* of the obligations, and equally true under that interpretation without improper assumption that the debtor had ever paid one cent in *discharge* of *her* obligations, and while affirming the refusal to permit him either to cross-examine or to produce his offered direct and primary evidence that such was the *fact* (which should have been the only question in the whole case).

It takes a little longer,—and is less obvious,—to deny to a litigant his *constitutional right to be heard in his defense* by doing so more gradually, but as effectively, through a series of uniform rulings admitting evidence of nothing for his opponent, and excluding evidence of anything pertaining to his defense, as in the case at bar, than it does to tell him frankly at the start that his ap-

pearance will not be recognized, he will not be heard, and a default judgment entered against him, as was attempted in *Windsor v. McVeigh*, 93 U. S. 274.

The practical effect, and the denial of constitutional right, are identical.

If this device of denying petitioner a hearing through a series of refusals to hear any evidence from him as to the truth, while admitting as conclusive against him expurgated hearsay and irrelevant records of proceedings to which he was not a party, and which are at least as consistent with his contention as with his opponent's (since the actual question was not there involved at all), is a denial of constitutional due process, it is respectfully submitted that *certiorari* should be granted, to the end that the constitutional right urged in the Supreme Court of Pennsylvania may be vindicated, against its denial there.

If the device may be effective, it is respectfully submitted that *certiorari* should be granted, to the end that every court of every jurisdiction of every State of the United States, and every litigant therein, may know exactly where and how the line is drawn whereby property may be taken from a citizen without affording *actual* opportunity to be heard by evidence in his defense as to the important facts on which it is based. The Supreme Court of Pennsylvania, recognizing the question by its allowance of the appeal (R. 143), has not explained (R. 144).

Certainly your Honorable Court has never yet hinted at the existence of such a loophole in the Constitutional protection of due process of law, and in the case at bar the Supreme Court of Pennsylvania has merely declined to afford petitioner the protection guaranteed by the Fed-

eral Constitution, without discussion of the constitutional right there earnestly and specifically claimed, and on which it had allowed the appeal against opposition.

What your Honorable Court *has* said, and most recently, on the subject of the importance of Federal Constitutional rights, and the right and duty of this Court to examine them independently of State Court determinations, in decisions in complete accord with what has always been declared by this Court, and in three decisions handed down since that of the Supreme Court of Pennsylvania in the case at bar, is as follows.

Milk Wagon Driver's Union v. Meadowbrook Dairies, 85 L. Ed. Adv. 497.

(499). "Still it is of prime importance that no constitutional freedom, least of all the guaranties of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made."

(502). "Here again, the state courts have not the last say. They must act in subordination to the duty of this court to enforce constitutional liberties even when denied through spurious findings of fact in a state court."

Smith v. O'Grady, 85 L. Ed. Adv. 548.

(549) "The judgment of the Nebraska Supreme Court is a final and authoritative answer to petitioner's contention that his imprisonment was illegal under the state's constitution or laws. But petitioner also contended that his imprisonment was illegal under the Federal Constitution. And in denying the writ the Nebraska court necessarily held that petitioner's allegations—even if proved in their entirety—would not entitle him to habeas corpus, even if the petition showed a deprivation of Federally protected rights. • • • That [the Federal] Constitution is the supreme law of the land, and 'Upon the state courts, equally with the courts of the Union, rests the obliga-

tion to guard and enforce every right secured by that Constitution.' "

Edwards v. United States, 85 L. Ed. Adv. 563.

(568) "The refusal to permit the accused to prove his defense may prove trivial when the facts are developed. Procedural errors often are. But procedure is the skeleton which forms and supports the whole structure of a case. The lack of a bone mars the symmetry of the body. The parties must be given an opportunity to plead and prove their contentions or else the impression of the judge arising from sources outside the record dominates the results. The requirement that allegations must be supported by evidence tested by cross-examination protects against falsehood. The opportunity to assert rights through pleading and testimony is essential to their successful protection. Infringement of that opportunity is forbidden."

The record here shows beyond question that this petitioner never had that constitutionally guaranteed opportunity, and this in the face of extensive argument in the Supreme Court of Pennsylvania in an appeal specially allowed by that Court on a petition specifically raising the constitutional question.

It is respectfully submitted that the writ of *certiorari* should be granted, to the end that your Honorable Court may exercise its highest function of determining independently whether this petitioner's rights of property and of reputation have been taken away without affording him the actual right to be heard in his own defense, which is of the very essence of due process of law, under the Federal Constitution.

Respectfully submitted,

WILLIAM S. DOTY,
THOMAS A. THORNTON,
Counsel for Petitioner.